

**ANNUAL REPORT OF THE
STUDY COMMITTEE ON COMPLEX LITIGATION
TO THE ILLINOIS JUDICIAL CONFERENCE**

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October 2002

I. STATEMENT ON COMMITTEE CONTINUATION

The mission of the Study Committee on Complex Litigation is to study, make recommendations on, and disseminate information regarding successful practices for managing complex litigation in the Illinois courts. The major work of the Committee has been the completion of the *Illinois Manual for Complex Civil Litigation* and the *Illinois Manual for Complex Criminal Litigation* and the production of annual updates and subject-matter specific-supplements for the manuals.

The annual updates are necessary because of the rapid change in the law and practice regarding civil and criminal complex litigation. The subject-matter supplements are needed because of the ever-expanding range of subjects that judges are encountering in complex cases. The supplements to the civil manual include the topics of civil conspiracy; complex insurance coverage litigation; environmental cases; complex employment, consumer, and antitrust litigation; joint and several liability and contribution; and damages and attorneys' fees. The criminal manual has been supplemented with a new chapter on complex post-conviction review proceedings. The Committee continues to believe that the work of updating and supplementing the manuals contributes to the mission of the Conference. Therefore, the Committee requests that it be continued as a full-standing committee of the Illinois Judicial Conference.

II. SUMMARY OF COMMITTEE ACTIVITIES

1. Civil Manual. During the past Conference year, the Committee updated the *Illinois Manual for Complex Civil Litigation* with a twelve-page cumulative list of manual pages affected by recent developments. The Committee also drafted new chapters on joint and several liability and contribution, and on damages and attorneys' fees.

The civil manual first appeared in 1991; the Committee produced comprehensively revised editions in 1994 and 1997. Over 200 judges have received copies of the manual, and it has been used as the basic text for a judicial seminar on complex litigation. The book covers the many issues that can arise in a complicated civil case, from initial case management through discovery, settlement, trial, and appeal. Chapters address special and recurring problems of complex cases, including class action proceedings, parallel actions in federal court and the courts of other states, and mass tort litigation. The manual seeks to provide practical advice for handling cases that risk becoming protracted and consuming disproportionate amounts of judicial resources.

The 2002 cumulative update discusses such important cases as the Supreme Court's

decisions in *Donaldson v. Central Ill. Pub. Serv. Co.*, 199 Ill. 2d 63 (2002), regarding expert testimony; *Bishop v. Burgard*, 198 Ill. 2d 495 (2002), regarding common-fund attorneys' fees; and *First Nat'l Bank v. Guerine*, 198 Ill. 2d 511 (2002), regarding forum non conveniens doctrine. It alerts judges to continuing development of the law at the appellate level on such topics as jurisdiction in class action cases and large-scale nuisance liability.

The new chapter on joint and several liability and contribution addresses questions of interpretation of the statutes relating to apportionment of fault among parties and potential third-party defendants. It discusses jury instructions and suggests that holding a preliminary instructions conference early in the trial proceedings may be beneficial in minimizing disputes over the interpretation of the apportionment law. It also takes up the topic of good faith settlements, discussing their impact on contribution rights and the resolution of factual disputes bearing on good faith settlement.

The new chapter on damages and attorneys' fees takes up issues regarding the rule of *Moorman Manufacturing v. National Tank Co.*, 91 Ill. 2d 69 (1982); the topic of lost profits damages; and attorneys' fees questions such as federal-law preemption, the operation of the Illinois Attorneys Lien Act, and liability for fees when a client changes attorneys in the course of protracted proceedings.

2. Criminal Manual. This year, the Committee updated the *Illinois Manual for Complex Criminal Litigation* with an eleven-page cumulative list of manual pages affected by recent developments. The Committee also drafted a new chapter on complex post-conviction review matters. The first edition of the criminal manual appeared in 1997. Its thirteen original chapters cover topics such as identifying complex criminal litigation, handling complex grand jury proceedings, and managing the pretrial, trial, and sentencing phases of complex criminal cases.

The 2002 update to the manual discusses, among other developments, *People v. Miller*, No. 91241 (Ill. May 23, 2002), regarding per se conflict of interest; *People v. Strain*, 194 Ill. 467 (2001), regarding the scope of voir dire; the interpretation of the proportionate-penalties clause in *People v. Walden*, No. 90976 (Ill. Apr. 18, 2002) and *People v. Hill*, No. 91329 (Ill. May 23, 2002); and the resolution of issues related to *Apprendi v. New Jersey*, 530 U.S. 466 (2000), in *People v. Hopkins*, No. 91938 (Ill. June 6, 2002), *People v. Jackson*, No. 91359 (Ill. Apr. 18, 2002), and *Hill v. Cowan*, No. 90229 (Ill. Apr. 18, 2002).

The criminal manual's new chapter on complex post-conviction review matters discusses management of the flow of post-conviction review petitions; issues specific to the Post-Conviction

Hearing Act, such as waiver, res judicata, and evidentiary hearings; and issues relating to 735 ILCS 5/2-1401, the Habeas Corpus Act, and other avenues of post-conviction review. The chapter also discusses discovery in post-conviction proceedings and the duties of attorneys in the proceedings.

Hon. Clyde L. Kuehn has served as chair of the Committee since January 14, 2002.

III. PROPOSED COMMITTEE ACTIVITIES FOR THE NEXT CONFERENCE YEAR

During the next Conference year, the Committee plans to monitor and evaluate caselaw, rule changes, and legislation, and to draft updates and supplements to keep the *Illinois Manual for Complex Civil Litigation* and the *Illinois Manual for Complex Criminal Litigation* current. The Committee has under discussion the possibility of a general revision of the criminal manual in light of case law and practice developments that have occurred since 1997.

The Committee anticipates that the manuals and updates will be available on CD-ROM in Fall 2002.

IV. RECOMMENDATIONS

The Committee is making no recommendations to the Conference at this time.